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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)
	)
Petition of U S WEST Communications, Inc.	)
For Forbearance From Regulation as a	) CC Docket No. 99-1
Dominant Carrier in the Seattle, Washington MSA	)

AT&T OPPOSITION

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February 18, 1999

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Pursuant to the Commission's Public Notice, DA 99-104, released January 4, 1999, AT&T Corp. ("AT&T") hereby opposes the Petition of U S WEST Communications, Inc. for Forbearance ("Seattle Petition"), filed December 30, 1998.

I. INTRODUCTION AND SUMMARY

On December 30, 1998, U S WEST petitioned the Commission pursuant to Section 10 of the Telecommunications Act of 1996 (47 U.S.C. § 160) to forbear from regulating U S WEST as a dominant carrier in the Seattle MSA for special access and dedicated transport services at speeds of DS1 and above. Specifically, U S WEST asks that the Commission allow permissive detariffing, which would permit but not require the filing of tariffs on one-day's notice without cost support. U S WEST also asks that it be allowed to set rates free from price cap regulation, and to deaverage rates within the Seattle MSA.

The arguments and analysis found in U S WEST's Seattle Petition are virtually identical to its August 24, 1998 Petition for relief in the Phoenix market ("Phoenix

Petition"). AT&T and many other parties demonstrated that U S WEST's Phoenix Petition should be denied.[1] The Seattle Petition suffers from the same fundamental infirmities as the Phoenix Petition, and thus fails to satisfy the standards of Section 10(a) of the Act.[2]

First, the Seattle Petition is in conflict with the Commission's policies favoring a market-based approach to access charge reform, and thus the Commission cannot find it to be in the public interest.

Second, U S WEST's description of the state of the high capacity market in Seattle is fundamentally erroneous. In particular, U S WEST relies on a flawed definition of a "retail" market to claim it has only a 21% market share, which vastly understates its real share of the high capacity market. The reality of the market is quite different: as of January 1999, only 6% of the monies spent by AT&T for high capacity services in the Seattle MSA are paid to competitive local exchange carriers ("CLECs"). The remaining 94% is paid to U S WEST (88%) and other ILECs (6%). U S WEST

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1 See Comments and Oppositions of AT&T, MCI WorldCom, Sprint, QWEST Communications Corporation, the Competitive Telecommunications Association, GST Telecom, Inc., and TSR Wireless LLC, filed October 7, 1998. See also Reply Comments of AT&T, MCI Worldcom, Ad Hoc Telecommunications Users Committee, and GST Telecom, Inc., filed October 28, 1998.

2 Section 10(a) requires that a request for forbearance satisfy three criteria: (1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations, by, for or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) Enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) Forbearance from applying such provision or regulation is consistent with the public interest. Additionally, Section 10(b)

(footnote continued on following page)

also uses an "equivalent DS1" measurement of the market that significantly exaggerates even the modest competitive inroads that have occurred in the Seattle MSA.

Third, U S WEST incorrectly claims that CLECs can quickly and inexpensively expand their networks to serve thousands of new end user locations, and immediately capture U S WEST's high capacity business. The reality of the marketplace, however, is that CLECs currently have direct access to only about 12% of high capacity customer locations, and expansion to new locations is time consuming, expensive and difficult. Additionally, U S WEST admits that fully 70% of its high capacity revenues are protected by long term contracts and associated termination liabilities.

To grant U S WEST the relief it seeks, the Commission must conclude that there exists a reasonably competitive market in the Seattle MSA to constrain U S WEST's conduct. This U S WEST has failed to show. AT&T therefore respectfully requests that the Commission deny the Seattle Petition.

II. GRANTING U S WEST's SEATTLE PETITION WOULD DISSERVE THE PUBLIC INTEREST

U S WEST's Seattle proposal, like its earlier Phoenix proposal, conflicts with the Commission's "market based" approach to access reform. The Commission has relied on the existence of competition to bring about reduced access rates for customers

(footnote continued from previous page)

requires that the proposed relief "promote competitive market conditions" and "enhance competition among providers of telecommunications services."

in general, rather than reductions for only a select or narrow market segment.[3] U S WEST's own data show, however, that few high capacity customers in the Seattle area have a competitive alternative. U S WEST concedes that only some three hundred buildings in the entire MSA are directly connected to CLEC facilities.[4] Given that high capacity services are provided to over 2,500 customer locations in the MSA,[5] U S WEST's data indicates that only about 12% of the high capacity customer locations in the Seattle MSA have a competitive alternative.

Because the access market is characterized by prices that greatly exceed costs, the main objective of regulation ought to be to reduce prices to all customers rather than to a small subset of individual customers. Given that the vast majority of U S WEST's high capacity customers are unprotected from U S WEST's monopoly power over access, deregulation such as U S WEST now seeks would clearly harm them. Moreover, if U S WEST is permitted to further deaverage access rates and target reductions to the limited group of large business customers that have competitive alternatives, it would have little incentive to lower access prices for the vast majority of

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3 Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges, First Report and Order (CC Docket Nos. 96-262, 94-1, 91-213, 95-72), FCC 97-158, 12 FCC Rcd 15982 (released May 16, 1997), ¶¶ 258-274.

4 See Quality Strategies, U S WEST High Capacity Market Study, Seattle Metropolitan Statistical Area, December 1, 1998 ("Quality Strategies") at 20, which notes that Worldcom has between 70 and 100 buildings on-net, TCG at least 115, Electric Lightwave Inc. 70, and MCI between 25 and 35. Since multiple CLECs frequently wire many of the same major buildings, the total number of buildings served would be less than the sum of these estimates.

5 See Quality Strategies at 5.

its access customers. The U S WEST proposal, therefore, is contrary to the Commission's "market based" access reform policy.

III. U S WEST's MARKET SHARE CLAIMS ARE INACCURATE

U S WEST bases its request for relief largely on inaccurate claims about its market share. For example, U S WEST claims that it now has a "retail" high capacity market share in the Seattle MSA of some 21%.[6] U S WEST's "retail" market share, however, is misleading and irrelevant. Because U S WEST is not permitted to directly offer interLATA services, but has a near-monopoly over the facilities necessary for other carriers to do so, it is entirely natural and expected that its facilities would be resold by interLATA carriers to offer interLATA services. U S WEST's definition of "retail" competitive losses illogically turns the requirements of Section 271 of the Act into a "loss of market share" that must be cured through regulatory relief.

Moreover, U S WEST's definition of "retail" business greatly exaggerates the economic impact of the so-called "losses" of these "retail" customers. In U S WEST's view, a customer who is served by a reseller of U S WEST's underlying facilities is a "lost" customer, and is counted the same for competitive purposes as a customer served 100% on a competitor's facilities. Clearly such a distorted definition of the market has no validity.[7]

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6 Id.

7 U S WEST also places excessive emphasis on changes in its share of the "transport" and "provider" segments of the market between the second and fourth quarters of 1997. Seattle Petition at 4. This is obviously far too short an interval to establish a trend upon which significant regulatory decisions should be based.

Nor is there any basis to view "account control" as so indispensable that a Seattle customer served on a wholesale basis must be considered to be a competitive loss for U S WEST.[8] U S WEST's account control argument ignores the fact that U S WEST already has an account -- a local services account -- with virtually 100% of the customers in the Seattle MSA. Moreover, account control is not an end in itself, but is a means to the end of obtaining greater sales from a customer. Obviously, U S WEST continues to receive a substantial revenue stream from these "lost" customers even if it does not send them a bill directly for the services it provides to them.

U S WEST's use of "equivalent DS1s" as a measure of market share is also misleading. That definition means that the loss of a single DS3 is viewed as the same as the loss of 28 DS1s. However, the price of a single DS3 may be only two to three times the price of a DS1, so the revenue loss of a DS3 is vastly overestimated by the use of the "equivalent DS1" measurement.[9] Even under its "equivalent DS1" measurement, U S WEST admits that it has about 73% of the high capacity market in Seattle.[10]

Given that competitive alternatives are more available for DS3 than DS1 facilities, use of this "DS1 equivalent" measurement vastly overstates the true impact

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8 Seattle Petition at 19.

9 For that reason, AT&T presents information regarding its total expenditures for high capacity services, which provides a more accurate depiction of the state of competition in the high capacity market than equivalent DS1 circuits.

10 Quality Strategies at 5.

of competition, for two reasons. First, it overestimates the financial impact of a loss of DS3 services. As an example, in the Seattle MSA, measured on a DS1 equivalent basis, the DS3 services used by AT&T represent 57% of its total high capacity facilities. However, these facilities consume only 19% of the monies spent by AT&T on high capacity services, even including DS3:DS1 multiplexing costs. If, hypothetically, all of AT&T's DS3 facilities were shifted to another network, U S WEST's methodology would indicate that it had lost 57% of the market, even though it continued to receive 81% of the revenues.

Second, and more importantly, a methodology that over-emphasizes competition at the DS3 level in order to justify regulatory relief for both DS1 and DS3 services does not paint an accurate picture of the state of competition at the end user's level. In the Seattle MSA, 99.3% of the circuits used by AT&T to connect to end user premises are DS1 facilities, where U S WEST's bottleneck power is most acute. Accordingly, use of a market share measurement that overemphasizes the importance of DS3 facilities will present an inaccurate picture of the competitive alternatives actually available to serve end user customers.

U S WEST also states erroneously that, since TCG's merger with AT&T, "U S WEST already is experiencing the effects ... as significant portions of [AT&T's] high capacity services have been migrated to the affiliated fiber networks."[11] The facts are far different. In the Seattle MSA, using January 1999 data, 90% of the money that AT&T spends on DS1 services goes to U S WEST, and 78% of the money it spends on

[11] Seattle Petition at 3.

DS3 services (including DS3:DS1 multiplexing) goes to U S WEST. In total, 88% of the monies AT&T spends in the Seattle MSA for high capacity services are paid to U S WEST. Of the remaining 12%, half goes to independent telephone companies and half goes to CLECs. Those facts stand in stark contrast to the picture painted by U S WEST of its competitive position.

The Commission cannot, therefore, accept U S WEST's distorted view of its market share. The fundamental legal limitations that result in U S WEST's substantial wholesale business – and its resulting share of its so-called "retail" market -- are not unique to U S WEST, but are the consequence of considered legislative action. Of greater concern, U S WEST's regulatory relief would be granted even though it continues to own the vast majority of the facilities used to provide the "last mile" of services to customers. The carrier that owns the wires (or fiber) to the customer controls the price, availability, quality, timeliness, repair intervals, available options, and many other aspects of the service that the customer experiences.[12] Given that U S WEST continues to control the vast majority of those facilities, the relief it seeks is inappropriate.

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[12] For example, the Arizona Commission recently declared that U S WEST's competitors are dependent on U S WEST for the purchase of facilities at the DS1 and above level because "the alternative providers do not yet have ubiquitous networks and therefore must purchase the "last mile" from U S WEST." See U S WEST Communications, Inc., Petition for Competitive Classification for its ATM Cell Relay Service, Docket No. T-01051B-97-0368, Decision No. 61328, Arizona Corporation Commission, adopted at Open Meeting on January 7, 1999.

IV. U S WEST EXAGGERATES THE ABILITY OF COMPETITORS TO SERVE HIGH CAPACITY CUSTOMERS IN THE SEATTLE MSA

U S WEST also bases its forbearance request on the claim that the majority of its special access customers in Seattle are essentially on-network for CLECs. For example, U S WEST states that "approximately 67 percent of U S WEST's current high capacity demand in the Seattle area is located within 1,000 feet of existing competitive provider networks."[13] U S WEST contends that CLECs can deploy facilities to thousands of customer locations in the Seattle area at minimal cost, simply because the customers' locations are within a few thousand feet of a CLEC's fiber cable. U S WEST concludes that competitive providers could absorb a majority of U S WEST's high capacity demand "easily and in a relatively short time."[14]

The facts, however, contradict U S WEST's predictions, and demonstrate that the CLEC network expansion that U S WEST views as quick and feasible is anything but. Establishing a connection into a new building requires the CLEC to conduct negotiations with the landlord to permit the use of their risers, laterals, building entrances, and telephone closets. Although to the best of AT&T's knowledge U S WEST is not asked to pay fees for such connections, an increasing number of

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13 Seattle Petition at 27. U S WEST elsewhere states that "61% of U S WEST's current high capacity demand in the Seattle area is located within 100 feet of existing competitive provider networks." Seattle Petition at 26. This allegation appears to be inconsistent with other statements in the Seattle Petition. Power Engineers Inc., for example, reports that 60% of customer locations are within 1,000 feet of a CLEC network facility, but only 44% are within 500 feet. See Power Engineers at 3. It would be presumed that a much smaller percentage of locations would be within 100 feet of a CLEC network, which casts doubt on the accuracy of U S WEST's 61% figure.

14 Seattle Petition at 26.

landlords are demanding such payments from CLECs.[15] Additionally, the CLEC must make arrangements to connect its existing fiber through new rights-of-way into the building, which may entail crossing public or other rights of way and consequent negotiations with other parties. Finally, the cost of the electronics to terminate a fiber connection into a new building means that such connections are not economically viable unless the CLEC can foresee a significant amount of traffic from that building. Dedicating several fibers (it usually takes at least four fibers to wire a building) to a location that only produces a modest amount of traffic will not be an economically feasible arrangement, which further limits the number of locations to which CLECs can directly extend their fiber networks.

U S WEST's own information confirms that CLECs are not in any sense capable of "immediately" serving a majority of U S WEST's high capacity customers. U S WEST's market analysis states that about 300 buildings in the Seattle area are served by its competitors.[16] U S WEST, however, currently provides high capacity services in the Seattle MSA to a total of 2,517 customer locations, and thus some 85% of the customer locations are not "on-network."[17] Of the more than 29,000 business establishments in the Seattle area, only a minute fraction obtain service from any of

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15 See AT&T Comments, September 14, 1998, at 48-52, in Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146.

16 Note 4, supra.

17 Note 5, supra.

U S WEST's competitors.[18]

In its Opposition to the Phoenix Petition, AT&T pointed out that U S WEST's high capacity revenues were protected from competitive inroads by the prevalence of long term agreements, together with its application of termination liabilities that are among the highest in the industry. AT&T pointed out that a customer signing a three-year term agreement on a $1,200 per month DS1 that wished to switch to a competitor after the initial 8 months would face a termination liability of $24,960, an amount that would preclude competitive choice.

The Seattle Petition admits that U S WEST's existing term discounts and substantial termination liabilities do protect its market position. U S WEST concedes that 70% of its high capacity revenues are protected by term agreements and termination liabilities.[19] It further concedes that at least a third of those revenues are in contracts that stretch to 2002 and beyond.[20] U S WEST fails, however, to provide a detailed explanation of the extent of these termination liabilities, and their implications for the ability of the affected customers to exercise freedom of choice. U S WEST merely makes the vague and ambiguous declaration that "half of these revenues are

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18 According to 1990 census data, there are a total of 29,083 businesses in the Seattle-Bellevue-Everett MSA. This information is based on a count of businesses in the cities of Auburn, Bellevue, Edmonds, Everett, Kent, Kirkland, Lynwood, Redmond, Renton, and Seattle.

19 Seattle Petition at 24, note 76.

20 Id. U S WEST states that two thirds of its contracts expire in 36 months or less, implying that one third expire in a period in excess of 36 months from now.

subject to minimal termination liability charges (i.e. 15%)."[21] U S WEST does not explain what the point of reference is for its "15%" figure. It is not clear if this refers to 15% of a month's billings, a year's billings, or the amount owed for the life of the contract. Nor does U S WEST explain the statistical significance of its 15% figure. U S WEST does not, for example, represent that 15% is a mean value for the termination liabilities for the half of its revenues that it is discussing. More importantly, U S WEST provides no point of reference whatsoever as to the termination liabilities that would apply for the other half of its protected revenues.

While AT&T believes that the Seattle Petition is entirely without merit, were the Commission to give it any further consideration, it will be essential to obtain vastly more complete and accurate information about the 70% of U S WEST's high capacity revenues that are protected by its termination liabilities, and how practical it might be for competitors to serve those customers and circuits. The record presented by U S WEST on this issue is manifestly inadequate to assess the extent to which U S WEST's high capacity revenues are potentially subject to competition in the near future.

Accordingly, the Commission can give no credence to U S WEST's claim that its competitors are capable of promptly serving even a small portion of its existing Seattle high capacity services, much less a majority of those services. The reality is that the competitive market in Seattle is not sufficiently robust to constrain U S WEST's behavior, and accordingly the statutory standards for forbearance are not satisfied.

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21 Id.

V. CONCLUSION

U S WEST's Seattle Petition, like its earlier Phoenix Petition, suffers from numerous methodological and factual flaws. U S WEST has failed to meet the standard for forbearance, and accordingly its Petition should be denied.

Respectfully submitted,

AT&T CORP.

By______________________________

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February 18, 1999

CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 18th day of February, 1999, a copy of the foregoing "AT&T Opposition" was served by U.S. first class mail, postage prepaid, upon the following:

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